

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

ACIE GILKEY, JR., # 1219076,	§	
	§	
Plaintiff,	§	
	§	Civil Action No. 3:06-CV-1903-D
VS.	§	(Consolidated with Civil Action Nos.
	§	3:06-CV-1904-D and 3:06-CV-1905-D)
BRAD LIVINGSTON, Executive Director,	§	
Texas Department of Criminal Justice, et al.,	§	
	§	
Defendants.	§	

ORDER

After making an independent review of the pleadings, files, and records in this case, the April 27, 2007 findings, conclusions, and recommendation of the magistrate judge, and the objection filed by plaintiff on May 15, 2007, the court concludes that the findings and conclusions are correct. It is therefore ordered that the findings, conclusions, and recommendation of the magistrate judge are adopted.


The following are also denied: plaintiff's February 20, 2007 request, in which he moves the court to issue an order for service of process on all defendants, and his February 20, 2007 motion for joinder of additional complaint and additional parties/defendants, and request for consolidation of all claims/complaint as a counterclaim.

Plaintiff filed notices of appeal in these consolidated cases on December 8, 2006 and December 26, 2006, which have been docketed in the United States Court of Appeals for the Fifth Circuit as Nos. 06-11353 and 07-10019. This court is not deprived of jurisdiction to act on the magistrate judge's findings and recommendation because these two appeals are from unappealable orders. Such appeals do not deprive the court of jurisdiction. *See United States v. Green*, 882 F.2d 999, 1001 (5th Cir. 1989) (notice of appeal from nonappealable order does not render void for lack

of jurisdiction acts of trial court taken in the interval between filing of the notice and dismissal of the appeal); *United States v. Hitchmon*, 602 F.2d 689, 694 (5th Cir. 1979) (en banc) (contrary rule would leave district court powerless to prevent intentional dilatory tactics).

SO ORDERED.

June 27, 2007.



SIDNEY A. FITZWATER
UNITED STATES DISTRICT JUDGE